

CWP-20794-2023

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Neutral Citation No. 2023:PHHC:127362

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-20794-2023

Date of Decision: October 03, 2023

Prem Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Ms.Rupinder K.Thind, Advocate
for the petitioner.

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RAJESH BHARDWAJ, J.(ORAL)

Prayer in the present petition is for setting aside the orders dated 28.03.2018 and 02.03.2023 (Annexures P-5 & P-6) passed by respondents No.2 and 1 respectively and maintaining the order dated 28.07.2017 (Annexure P-1) passed by respondent No.3.

Adumbrated facts of the case are that on the death of general caste Lambardar Mahavir Prasad on 11.04.2015, process for the appointment of new Lambardar was initiated. The necessary approval was given vide order dated 01.10.2015. The mustri munadi was conducted for inviting the applications from the interested candidates. In pursuance to the same, total 14 applications were received from the candidates namely, Sandeep Kumar son of Subhash Chand, Prem Kumar son of Mool Chand, Sahdev son of Mool Chand, Sumitra wife of Sandeep Kumar, Mamta wife of Rajendra Kumar, Diwan Chand son of Gordhan, Rajendra son of Jagram, Vinod son of Mahavir, Naresh Kumar son of Daya Ram, Asa Ram son of Nathuram,

Prem Kumar son of Ram Lal, Satpal son of Jhabar Ram, Ruli Chand son of

Rampratap and Ashwani son of Pala Ram. However, some of the candidates withdrew their applications and thus, the character verifications of rest of the candidates were obtained. Finally, only four candidates namely, Sandeep Kumar, Prem Kumar, Rajendera Kumar and Ruli Chandra remained in the fray. On appreciation of their applications and antecedents, it was found that Prem Kumar was 35 years of age and had the qualification of BA, MA, MPhil. Besides this, he had 64 kanals of land; Sandeep Kumar was 31 years of age and had the qualification of 10+2. Besides this, he had 70 kanals 07 marlas of land; Ruli Chand was 33 years of age and he had the qualification of BA, BEd, LLB. Besides this, he had 41 kanals of land. On the analysis of their antecedents and character verification, the Collector found Prem Kumar son of Mool Chand as more suitable candidate than others and thus, appointed him as Lambardar of the Village vide his order dated 28.07.2017. Two appeals were filed against this order one by Ruli Chand and another by Sandeep Kumar(respondent No.4) before the Commissioner, Hisar Division, Hisar. However, after hearing counsel for both the sides, the Commissioner, Hisar Division disposed of the same by remanding the case for a decision afresh vide his order dated 28.03.2018. Aggrieved by the same, petitioner filed the revision before the Financial Commissioner, Haryana, Chandigarh. However, Financial Commissioner, finding no merit in the same, dismissed the revision petition by upholding the remand order passed by the Commissioner for a decision afresh. Thus, being aggrieved, the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that from perusal of the record of the petitioner, it is apparent that he was

more qualified than respondent No.4 thus, being more suitable candidate, he was appointed by the Collector as Lambardar of the Village. It is submitted that the Commissioner illegally disposed of the appeals filed by respondent No.4 and one Ruli Chand and remanded the case for decision afresh. She submits that the revision petition filed by the petitioner was also illegally dismissed by the Financial Commissioner. She further submits that the impugned orders are totally cryptic being without any reason. It is submitted that as per the settled law, the view taken by the Collector cannot be interfered in a cavalier manner unless the same suffers from patent illegality but both the authorities below have failed to appreciate the same and thus, remanded the case for decision afresh which are unsustainable in the eyes of law. She has submitted that inter se merits of all the candidates were duly appreciated by the Collector but the Commissioner and the Financial Commissioner have failed to appreciate the same and thus, illegally set aside the well reasoned order passed by the Collector dated 28.07.2017. She has further submitted that though there was an FIR registered against the petitioner but he had been acquitted by the Appellate Court vide order dated 17.05.2013 and thus, there was no stigma against the petitioner but the Commissioner and the Financial Commissioner have failed to appreciate the same. She has submitted that in the facts and circumstances of the case, the impugned orders deserve to be set aside.

Heard.

After hearing counsel for the petitioner and perusing the record, it is evident that on the death of earlier Lambardar, the process for appointment of new Lambardar was initiated. The mustri munadi was

conducted for inviting the applications from the interested candidates. In pursuance to the same, total 14 applications were received. However, some of the candidates withdrew their applications and thus, the character verification of rest of the candidates were obtained. Finally, only four candidates namely, Sandeep Kumar, Prem Kumar, Rajendera Kumar and Ruli Chandra remained in the fray. On appreciation of their applications and antecedents, it was found that Prem Kumar was 35 years of age and had the qualification of BA, MA, MPhil. Besides this, he had 64 kanals of land; Sandeep Kumar was 31 years of age and had the qualification of 10+2. Besides this, he had 70 kanals 07 marlas of land; Ruli Chand was 33 years of age and he had the qualification of BA, BEd, LLB. Besides this, he had 41 kanals of land. On the analysis of their inter se merits, the Collector appointed Prem Kumar son of Mool Chand as Lambardar vide his order dated 28.07.2017. However, in the appeal filed, the Commissioner found that the petitioner was involved in a criminal case and there were allegations regarding encroachment on the common land in which the demarcation could not be conducted. It has been found that these allegations were not appreciated at the time of his appointment and thus, the case was remanded back for decision afresh by taking into account the allegations against the petitioner. The revision filed by the petitioner before the Financial Commissioner also failed as the view taken by the Commissioner was upheld by the Financial Commissioner. As per the settled law, there is no gainsaying that appointment made by the Collector should not be interfered in a cavalier manner. However, if the same suffers from any patent illegality, the same can be reversed.

From the facts and circumstances of the case on record, it came to the light that the petitioner had faced prosecution in a criminal case and there were allegations against him regarding the encroachment on the common land which were not appreciated by the Collector and thus, the case had been remanded for a decision afresh. Hence, in the considered opinion of this Court, the impugned orders 28.03.2018 and 02.03.2023 passed by the Commissioner and the Financial Commissioner suffer from no illegality. To meet the ends of justice, the case needs to be decided afresh. Thus, finding no merit in the petition, the same is hereby dismissed. However, keeping in view the facts and circumstances of the case, the Collector is directed to decide the case, after hearing both the parties, expeditiously, preferably, within three months from the date of receipt of certified copy of this order.

October 03, 2023
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(RAJESH BHARDWAJ)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |